IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

1. S.B.CIVIL SECOND APPEAL NO.71/2006
   Laxman vs. Municipal Council, Pali.

2. S.B.CIVIL SECOND APPEAL NO.72/2006
   Kailash Chand vs. Municipal Council, Pali.

3. S.B.CIVIL SECOND APPEAL NO.73/2006
   Shiv Lal vs. Municipal Council, Pali.

DATE OF JUDGMENT ::: 27.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MA Siddiqui, for the appellants.

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REPORTABLE

BY THE COURT:

Heard learned counsel for the appellant.

These three appeals are decided by this common judgment as they involve common question of law and fact.

According to learned counsel for the appellant, this is third round of litigation. The appellant first filed the suit for injunction impleading Municipal Council, Pali as

well as Krishi Upaj Mandi Samiti, Pali. In that suit, the trial court without deciding the title of the suit property decreed the suit of the plaintiff that the plaintiff shall not be dispossessed from the land in dispute without following due process of law.

After that decree, the plaintiff filed the suit for getting the rights over the property and sought relief that either the possession of the plaintiff be regularised or the plaintiff may be allotted Kiosk over the land in question. That suit was dismissed and that dismissal attained finality.

Not satisfied with two rounds of litigation, the plaintiff filed this third suit challenging the authority of the Municipal Council, Pali by which it wanted to evict the plaintiff for which, according to learned counsel for the appellant, it issued notice. The said suit was dismissed by the trial court on application filed under Section 11 CPC by the Municipal Council, Pali by judgment and decree dated 26.11.2005. Against which the plaintiff/ appellant preferred appeal which too was dismissed by the appellate court vide judgment and decree dated 14.2.2006.

According to learned counsel for the appellant, the courts below committed serious error of law in allowing the application filed under Section 11 CPC filed by Municipal Council, Pali. It is submitted that though three suits were filed but for each suit, there was separate cause of action, therefore, the suit was not barred by principle of resjudicata in any manner.

It is further submitted that the first appellate court committed serious error of law in dismissing the suit. It is also submitted that in the present suit, the plaintiff challenged the authority of Municipal Council, Pali who issued notice for eviction of the plaintiff on the ground that the land does not belong to Municipal Council, Pali and the notice is wholly without jurisdiction. That point was not involved in any of the earlier suit, therefore, the courts below committed serious error in dismissing the plaintiff's suit.

I considered the submissions of learned counsel for the appellant.

It appears from the facts stated by learned counsel for the appellant himself that the entire foundation of his claim is that he is in possession of the land in question. On the basis of this, he could have sought relief from the court of law that he may not be dispossessed without following due process of law. In the first round of litigation, the plaintiff got relief through the court of law as the Court granted decree that the plaintiff shall not be dispossessed without following due process of law. The plaintiff's second suit was for getting the land transferred in his favour from Municipal Council, Pali itself. By this, the plaintiff admitted the right of Municipal Council, Pali so far as the land in question is concerned. The suit of the plaintiff was dismissed and that dismissal attained finality, therefore, the plaintiff can

neither claim regularisation nor can claim allotment of Kiosk over the land in question after the dismissal of the suit. The plaintiff otherwise also could not have been dispossessed from the land by anybody without following process of law but in this case, the plaintiff's said right has force of decree in his favour. Therefore, the plaintiff after seeking allotment of Kiosk from Municipality in second round of litigation cannot challenge the authority and right of the Municipal Council.

By this third suit, the plaintiff wants to challenge the action of the Municipal Council, Pali who issued notice to evict the plaintiff from the land in question. By this, the defendant Municipal Council is doing nothing more than following the process of law for eviction of the plaintiff which is permissible in the light of the decree which the plaintiff obtained in his first suit wherein the civil court specifically decreed the suit of the plaintiff to the effect only that he can be evicted by following process of law. When the process of law is being followed, that is being challenged by the appellant on the ground that the authority who has issued notice and from whom, he sought regularisation by filing the second suit, has no authority to evict the appellant. Once the plaintiff admitted the right and authority of the Municipal Council, Pali with respect to alienation of property by way of allotment or regularisation etc., he had no right to seek injunction against the Municipal Council, Pali for following due process of law for eviction of the plaintiff. On the face of it, the suit filed by the plaintiff with the allegations

made therein as well as in the background unambiguously discloses that this is a frivolous litigation initiated by the plaintiff to keep his possession illegally.

The Hon'ble Supreme court in the case of T. Arivandandam vs. T.V. Satyapal and another reported in AIR 1977 SC 2421 held that frivolous litigation should be nipped in the bud and in view of the facts which have been narrated before this Court, this Court is of the opinion that even if the application was filed under Section 11 CPC by the respondent, even then the suit could have been dismissed by invoking the powers under Section 151 CPC by the trial court.

In view of the above, no substantial question of law is involved in these appeals. Accordingly, these appeals, having no merit, are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya